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ABSTRACT

The increase in apprenticeships and on-the-job experiences at schools and vocational institutions has increased school administrators' and employers' legal responsibilities. One major legal concern is responsibility for student injury at the training site. While all states have workers' compensation laws, states have varying laws concerning minors. Federal laws may also apply to minors and workers' compensation. Other factors may influence the applicability of workers' compensation laws. If a minor is illegally hired, workers' compensation laws may not apply and the employer may be held liable for injuries. Another contractual question is whether an apprentice is a paid employee or a student learner. If apprentices are paid, they are most likely legally defined as employees and are eligible for benefits, with some exceptions. Violation of child labor laws is another concern that is greater for trade and industrial educators than others. Different states have approached the legal problems concerning apprenticeships in different ways. Some states have provisions in their workers' compensation laws to include minors. Other states regulate insurance companies' ability to limit apprenticeship programs. (Contains 23 references.) (JPT)

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LEGAL ASPECTS OF YOUTH APPRENTICESHIPS: WHAT YOU SHOULD KNOW

by Stan Lightner and Edward L. Harris

Youth apprenticeship programs are rapidly on the rise and are presenting distinct challenges to school leaders. While common schools and vocational institutions are expanding opportunities for teenagers to simultaneously receive sound academic instruction and practical on-the-job experience, administrators are faced with increasing legal responsibilities and unique policy dilemmas.

What legal knowledge should administrators and vocational teachers have? What preventive law strategies can be incorporated to help ensure safe and successful vocational programs? What are the legal implications and ramifications of On-the-Job Training programs? In an age of mounting litigation, these questions require answers. School executives can find insight into these answers in three fundamental, legal areas: Workmen's Compensation Laws, Contractual Agreements, and Child Labor Laws.

Minors and Workmen's Compensation

As youth apprenticeship initiatives gather momentum, an obvious result will be an increase in the number of minors in On-the-Job-Training (OJT) situations. A major concern in OJT is the employer's and educator's legal responsibility for student injury at the training site. It would be easy to assume that if the apprentice is an employee of the company, he or she would automatically be covered under the applicable workers' compensation policy. Because of the age of teenage apprentices, this belief could be erroneous.

One should keep in mind that, while all states have workers' compensation laws, there are variations from state to state, and whether a minor is covered under workers' compensation is dependent upon a state's particular statutes. According to one legal resource:

> Ordinarily, the fact that a person is a minor does not preclude that person from being an employee within the terms of a workmen's compensation statute. A minor employee may be bound by the workmen's compensation act regardless of his age, or an act may be applicable to a minor over a certain age; but where the act provides that it shall not apply to a minor

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under a certain age, it applies to a minor who is over that age (99 C.J.S. Workmen's Compensation § 112).

Such terms as "ordinarily", "may be", and "but" should be warning signs; because, in essence, the above quote means, "it depends." Anyone involved in youth apprenticeship should take a close look at his or her state statute for workers' compensation and examine them thoroughly for any mention of age requirements. It is also quite possible that there is no mention of any age requirements in the law. For example, the Oklahoma Workers' Compensation Act does not have any age specifications within the act. This does not mean that one should quit looking for age stipulations. Close examination of an Oklahoma Statute reveals that no child under the age of 16 shall be permitted to work in any occupation other than those permitted by the Fair Labor Standards Act of 1938.

When examining the ramifications of Workers' Compensation Laws on a Youth Apprenticeship program it is also necessary to examine Federal and State Child Labor Laws, and case law. Since minors are involved, what may be permissible under one law may not be under another. If there is discrepancy, do not assume that the Federal Laws will prevail, because a state statue can be more restrictive than a similar Federal Law. Therefore, if one law says yes and another says no, the answer is not necessarily maybe, but probably a clear and concise NO!

The lack of any age restrictions in the Workers' Compensation Law seems to imply a "yes," but the Child Labor Law clearly contains age requirements. This means the latter takes precandent. An employer's protection under workers' compensation law against civil suits may be lost if the employer violates the age standards of the child labor law. The case of *Baker v. Hunn* Roofing (1975) reaffirmed earlier rulings (i.e., *Rock Island Coal Mining Co. V. Gilliam*, 1923; *Associated Indemnity Co. v. Frierson*,1946; *Western Casualty and Surety Company v. Teel*, 1968) that illegal underage employees are not covered by Oklahoma's Workmen's Compensation Act, and that a minor who is injured in the course of illegal hazardous employment may proceed in common law tort against his employer.

Any employer who illegally hires a minor may not be covered by workers' compensation insurance. If an illegally employed minor is injured, the case can proceed directly to civil court where

the employer can be held directly liable for all monetary claims. It would be tantamount to the employer not having any insurance at all. Knowledge of your states workmen's compensation laws is of vital importance.

Contractual Agreement

A second consideration concerns the contractual agreement between the employer and educator. A primary question in this agreement is: Is the apprentice a **PAID** employee or a student learner? *Hillcrest Hospital v. State Industrial Court* (1968) established that the relationship of employer and employee is first prerequisite to any award under Workmen's Compensation Act. In this case the student nurse was not paid for any of the duties she performed, thus, she was not entitled to coverage under workers' compensation.

If apprentices are paid they will most likely be defined as employees and be eligible for benefits. Look for a definition in your state workers' compensation law. For example, the Oklahoma Workers' Compensation Act (O.5.85 & 3 paragraph 4) defines an employee as "any person engaged in the employment of any person, firm or corporation covered by the act." If one is paid by someone else, he or she is an employee. Also, look for any exemptions/exclusions to the workers' compensation law. Examples of exemptions include:

1) Domestic or casual employees of a private home/household with an annual payroll of less than $10,000;

2) Anyone covered under Federal Workers' Compensation Acts;

3) An agricultural or horticultural employee whos' employer has an annual payroll of less than $100,000;

4) Agricultural employees who do not use motorized machinery; and

5) Persons providing services in medical care or social services programs administered by the Department of Institutions, Social and Rehabilitative Services or the Department of Human Services.

Another clause to look for in the applicable workers' compensation law is an estoppel provision. Such a provision should resemble the following:

> Every employer and every insurance carrier who schedules any employee as a person employed by the employer for the purpose of paying or collecting insurance premiums on a Workers'

> compensation insurance policy shall be estopped to deny that such employee was employed by the employer.

According to Black's Law Dictionary (1990) estop means "to stop, bar or impede; to prevent; to preclude" (p. 551). An employer, or insurance company, cannot define a person as an employee for the purposes of premium payments and then turn around and attempt to deny that same person workers' compensation benefits should the need arise.

The very use of the word apprentice can bring some laws into play that may not have been anticipated. Europeans have had apprenticeships for centuries and have incorporated them into their education systems. They have a clearer understanding of the legal ramifications than many American educators. In legal terms, an apprentice is "a person who agrees to work for an employer for a specified time for the purpose of learning the craft, trade or profession in which the employer agrees to instruct him" (Black's Law Dictionary, 1990, p. 201). An apprenticeship is a legal binding agreement (contract) between two or more parties. As defined by the U.S. Department of Labor an "apprentice shall mean a person at least sixteen (16) years of age, who has signed a written Apprenticeship Agreement with a Sponsor to learn an apprenticeable occupation (29 CFR Part 29.2)."

Various state Profession Standards Laws may also become applicable, such as:

> the word 'apprentice' means a person who is engaged in learning the practice of cosmetology in a beauty shop.
>
> "Apprentice," or "Plumber's Apprentice," means, and is hereby defined to be, any person sixteen (16) years of age or over who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.
>
> Also, registration as an electrical apprentice in part requires enrollment in a school or training course for electrical apprentices . . . or . . . employment as an electrical apprentice.
>
> And, registration as an mechanical apprentice in part requires enrollment in a school or training course for mechanical apprentices . . . or . . . employment as an mechanical apprentice.

The contractual agreement between the employer and educational institution should be given much attention. It establishes the legal relationships between the work place and the school and should stipulate the precise role of the employee-student.

Child Labor Laws

One of the problems encountered when placing students in OJT situations has been the employers' fear of violating the Child Labor Requirements under the Fair Labor Standards Act. From antidotal evidence, this seems to be a larger problem for trade and industrial educators than other educators. As a Machine Tool Technology instructor one of the authors was turned down many times when he inquired about placing a student in OJT. The situation evolved to the point where there were no more potential employers to ask. One of the first questions asked about the student was, "How old is he?" When they learned the student was under 18 they would reject the idea immediately. Some employers were so fearful of liability problems they even refused to conduct tours of their facilities if any of the students were under 18 years of age. Even the Society of Manufacturing Engineers will not allow students under 18 to tour their tool shows that are conducted in various locations around the country.

It should not be surprising that employers, educators and others have misunderstandings regarding Child Labor Requirements. Two different publications by the Oregon Bureau of Labor and Industries have different age requirements for apprenticeships. Under entrance requirements, for the vast majority of apprenticeable trades listed, the Oregon Apprenticeship Guide says the "applicant must be 18 years of age" (p. 5). In contrast, their publication Child Labor Law and Youth Apprenticeship Programs, says that the program is open to 16- and 17-year-old students. This example might serve as an example of the ambiguity in the age stipulations found in the Child Labor Requirements under the Fair Labor Standards Act.

We encourage every one involved in a Youth Apprenticeship Program to obtain and study Child Labor Bulletin No. 101, published by the U.S. Department of Labor. Check with the Government Documents section of your nearest comprehensive university, or the local U.S. Department of Labor office for a copy of the document. A brief synopsis of this bulletin is as follows:

A) The most restrictive regulations are for 14 and 15 year olds. "Employment of 14 and 15 year-old minors is limited to certain occupations under conditions which do not interfere with their schooling, health, or well-being." (Child Labor Bulletin No. 101, p. 1)

B) These stipulations effectively ban 14 and 15 year olds from manufacturing, mining, food processing, commercial laundries, construction, maintenance & repair of equipment and buildings, transportation, warehousing & storage, cooking (with exemptions) and baking or any other occupation in which the minor may use or be exposed to power driven equipment.

C) Fourteen and fifteen year olds are permitted to be employed in office & clerical work, retail sales, cleanup work and grounds maintenance (but not including the use of power-driven mowers or cutters), gas station attendants, car washers, and food cleaning, weighing, pricing & stocking (except in meat preparation areas).

D) This is an incomplete list and teachers and administrators should refer to Child Labor Bulletin No. 101.

E) Exemptions are available to fourteen and fifteen year olds who are enrolled in "approved school-supervised and school-administered Work Experience and Career Exploration Programs (WECEP)" (Child Labor Bulletin No. 101, p. 3). The State Educational Agency must receive approval by the Wage & Hour Division before operating a WECEP.

Child Labor Bulletin No. 101 also lists 17 occupations that the Secretary of Labor has declared to be hazardous for 16 and 17 year olds that include: coal mining, logging & sawmilling, power-driven woodworking machines, exposure to radioactive substances, power-driven metal-forming, punching, and shearing machines (does not include machine tools), meat-packing, roofing operations, and excavation operations.

Hazardous Occupation Orders Nos. 5, 8, 10, 12, 14, 16, and 17 contain exemptions for 16 and 17 year-old apprentices and student-learners. There are conditions to be met to obtain an exemption. Page 12 of the Child Labor Bulletin No. 101 offers details in regard to these exemptions.

Crucial Considerations

Different states have approached the legal problems of youth apprenticeships in different ways. Oregon and Oklahoma have incorporated stipulations into their youth apprenticeship programs requiring employers to have workers' compensation. Some states such as Maine, Arizona, and North Carolina have provisions in their workers' compensation laws that include minors. The North Carolina Job Training Partnership Act Handbook for DPI/JTPA 8% Programs 1988-89 goes on to point out that Federal law "imposes certain civil monetary penalties for violation of the youth employment provisions" (p. 36). The handbook says "It is conceivable that JTPA contractors or employers who do not follow

these procedures may be considered for civil monetary penalties" (p. 36). If the employer failed to provide coverage, it is possible that school officials conducting youth apprenticeship programs could become liable.

Another area of concern is the possibility of insurance companies in effect forbidding the use of trainees under 18 through policy limitations. Insurance companies may not be able to enforce this type of provision if your state has the previously mentioned estoppel clause in the Workers' Compensation Act. No case law was discovered which may clarify this question and the authors do not encourage anyone to try to "help" establish the defining case law.

Other states have taken steps that should protect the schools, the employers, and the students. Maine's technical schools are legally responsible for all workers' compensation coverage into the program to avoid the disincentive of. In South Carolina, students placed with small employers are covered by the State School Board Association's policy. In Oakland, some of the students in the Health and Bioscience Academy are covered by the school district. Oklahoma and Wisconsin, as part of their apprenticeship agreements, require the participating employers to have workers' compensation insurance. While the U.S. Department of Labor addresses the need for safety and health training, there is nothing in the Basic Standards of Apprenticeship handbook that requires or implies a requirement on the part of the employer to carry workers' compensation insurance.

Conclusions

The authors believe that practical OJT programs and apprenticeship initiatives can open opportunities for many students. At the same time, school leaders, employers, and vocational educators must be allert in these litigious times for possible legal ramifications. It is important to be aware of state statues as well as Federal mandates and case law concerning youth apprenticeships. The contractual agreement between employer and educator is also significant and there should be articles within the document stipulating whether the apprentice is a paid employee or student learner.

In addition there are several preventive legal measures that can be taken. One possible way to limit liability is to draw from the experience of building contractors. As a way to protect themselves from workers' compensation suits from injured employees of the subcontractors most, if not all, contractors require the subcontractors to supply them with certificates of workers' compensation insurance. These certificates list the name of the insurance company, the policy number and the expiration date of the policy. School executives may want to consider adding this requirement to the apprenticeship agreements. Another strategy is to include the cost of the workers' compensation insurance into the Youth Apprenticeship program like the states of Maine and South Carolina have done. Research into your particular state laws would have to be conducted to decide if this approach would be permissible and financially feasable. Another preventive measure would be a thorough legal audit or evaluation of your vocational programs by the school's attorney. Special consideration should be paid to contracts, student working conditions, and federal and state policies. Also, the purchase of professional liability insurance is advised and available through the American Vocational Association and other professional organizations. One may also want to consult your personal insurance agent about professional liability insurance.

No one desires his or her professional career or school district to be tainted with unnecessary law suits due to ignorance of the law or to neglegence in assuring the best, safest vocational programs possible. Rather, school leaders should strive to be knowledgeable of federal and state laws, pertaining to vocational programs, be persistent in transacting clear contractual agreements, and incorporate pertinent preventive law strategies that will help ensure that youth apprentice programs are rewarding, safe, and successful for all.

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Biographical Information

Stan Lightner has nine years of experience in vocational education as an instructor and a researcher. He is also an industrial engineer who has supervised many individuals in vocational programs and the work-place. Stan Lightner is also certified as a Manufacturing Technologist by the Society of Manufacturing Engineers.

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